

LAW AND THE ART WORLD

Beware of referring to artwork as an investment

By Bill Frazier ©2013

In the last issue of *State of the Arts*, I commented on the practice of some less informed galleries and artists of suggesting that certain works of art were of investment quality in their sales pitches to customers. Since then, I have received two email solicitations from galleries advising me to buy “investment” quality paintings from two artists I have never heard of. They were nice paintings, certainly, but not investment quality.

To the galleries who are saying this, or thinking of saying this, beware of liabilities you may be bringing upon yourselves. And to potential buyers, I simply say beware of such sales solicitations.

Artists, never try to promote your artwork by stating that it is of investment quality. To those buyers who know better, you are destroying your credibility.

The concept of investment carries certain legal requirements and regulations and is not a term to be used casually. I have heard many artists referring to their buyers as “investors.” This is somewhat affected, if not questionable, but probably okay for the unsophisticated. Just do not refer to the artwork as an investment.

Scams continue to proliferate

Scams continue to proliferate on the internet. There are new solicitations arriving weekly, always offering something for nothing, sounding too good to be true, if not downright silly; but enough people take the bait to keep them coming to all of us. Again, beware.

Some come from individuals in foreign countries, purported foreign governments and deposed dictators or their widows and orphans, and yet others from reputed government agencies. These are attempts not only to get into your bank accounts, but also to get into your computer. Once they are in your computer, they often have the ability to steal your identity as well as move through emails and attachments to your friends and business associates.

If you are suspicious of an email such as these, do not open any attachments. Many emails come from what is supposed to be the IRS, but remember that the IRS does not use email for correspondence, only the U.S. mail.

All of these types of solicitations may look authentic, but they are not. If you are tempted by them, or want to respond, think twice.

Insurance for artwork

A continuing issue of concern is the matter of adequate insurance coverage for an artist’s artwork, both while in transit and while on display for sale or exhibit in a gallery. The artist must be satisfied that his work is insured fully while it is in the possession of a gallery.

Do not sign a contract, memo or letter of understanding or other document wherein the artist agrees to waive this insurance coverage. Most galleries are properly covered for loss or damage to consigned artwork, but others are not. It is up to the artist to investigate this status.

There have been situations where the artist’s work was not insured, or adequately insured, and it was damaged, stolen, lost or destroyed. There was no insurance coverage and the gallery owner did not have the financial ability to reimburse the artist for the damages.

Lack of insurance is often a problem when artists display their work in restaurants or coffee shops and then there is either smoke or fire damage. Proper insurance should insure against what is often called “all perils.” This means that while in the possession of a gallery, art show, auction or other venue, the work is insured against theft, fire or smoke damage, loss, mysterious disappearance, and sometimes water damage.

It is the responsibility of the artist to make certain that this insurance coverage exists. If you go forward without the insurance, it is then at your own peril.

The artist may want to ask to see the insurance coverage or be listed as a “named insured” depending on the value of the artwork. An alternative is for the artist to provide his own insurance coverage, but that is sometimes difficult.

Similarly, both artists and galleries need to be careful in shipping work to see that it is adequately insured. Shippers have disclaimers and defaults to minimum coverage, or coverage by weight, so that it is often necessary to buy additional insurance.

Make sure the insurance specifically covers artwork and the replacement value of the artwork.

Avoid potential of smoke damage

On a related note, I normally advise artist clients not to place their work in coffee shops



Bill Frazier

and restaurants for sale. If the restaurant wants to buy the work, fine, because damage is then its problem. However, there is always the threat of smoke, steam and fire damage, especially to items framed under glass.

Most galleries will not accept work if it has been displayed previously in such venues because of the probability of damage and then the threat of lawsuits when the damage is discovered by an unsuspecting buyer.

I have mentioned the issue of smoke damage several times in previous articles because it is a very real problem. Tragic losses of artwork occur every year from such accidents and from other unintentional and unexpected causes.

Insurance is designed to put us back into our position before the loss as nearly as possible, but can do nothing if we fail to buy it. I know that it can be expensive, but it is a cost of business in our litigious world.

Keep an eye on tax laws

Be sure to watch for changes in tax laws and stay in touch with your accountant. At the moment Congress is preoccupied with health care and immigration issues, so we do not know what is slipping into the tax law to catch us off guard!

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23

Direct mail fundraising

Is the internet the death knell for direct mail?

“Not even close,” writes Jeff Brooks in “Questions I’m Most Often Asked about Direct Mail Fundraising.”

“Direct mail is a long way from death. It’s still the most effective fundraising medium (after the church offering basket) and it’s many times more effective than email.

“But the way it works is changing. One important change is the way direct mail and the Web are becoming intertwined. Donors are moved by the warmth and personal touch of direct mail, then going online to give. It’s the best of both worlds when they do that: The higher average gifts we get from online donors, combined with the higher frequency and retention we see with direct-mail donors.”

Read the full article at www.guidestar.org.
– *GuideStar*,
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Tech Talk: Using the Foundation Center

By Mark Ratledge

As I wrote a few issues ago, it takes money to work as an artist or run a nonprofit, and creative financing is a de rigueur skill in a state like Montana. And so most of us, and the organizations we are involved with, have at some point applied for funding by writing grant applications to funding organizations, be they government entities or public and private philanthropic foundations.

Grant writing is a skill itself; you must be able to write concisely about your own work or the mission and goals of your organization, provide clear and accurate financials, navigate online forms, and much more. But one must also be able to locate potential funders and find their deadlines, program details and priorities. This is where the world of technology comes in with the Foundation Center and its online services.

The width and breadth of the Foundation Center and its available resources may surprise you as an artist or organization. The center is a non-profit 501(c)(3) dedicated to being the most comprehensive source of information about philanthropy worldwide. It was established almost 60 years ago and is funded by nearly 550 other foundations.

The center has a service called the Foundation Directory, which provides databases of thousands of foundations and grant makers, the grants they have given, tax documents, lists of board members and trustees, and many philanthropy resources in general.

If you’re applying for funding in any respect, you need to know about these resources. Even if you’re simply doing research on the nonprofit sector – like finding out who funded what and when – the Foundation Center is the only place to go for such information.

For instance, you can search for all the grants that were made to organizations in Montana; all the foundations in New York City that make grants to artists in Montana; all the past grants that went to, say, organizations in Missoula over the last 10 years; all the foundations a particular trustee or company is involved with, and more.

In Montana, there are different ways to do your own searches of grants and grant makers:



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- You can do your own free (but limited search) on the web at the Foundation Directory Online at fdo.foundationcenter.org;

- You can pay for your own full access at that same website;

- Or you can go to one of five libraries around the state and use the Foundation Directory Online for free.

The Foundation Directory Online is available at the Bozeman Public Library, the Flathead

County Library in Kalispell, Montana State University-Billings Library, Montana Tech Library in Butte and the Mansfield Library at The University of Montana in Missoula. The online directory can only be used at those locations; the license for the Foundation Center restricts access to in-house use at each library – there is no remote online access.

Next issue: Part 2 – Using the Foundation Directory